

BEFORE HON'BLE NATIONAL GREEN TRIBUNAL
WESTERN ZONE BENCH, PUNE

ORIGINAL APPLICATION NO.106/2022(WZ)



Vanshakti & Anr. Applicant

Versus

Union of India & ors. Respondent

AFFIDAVIT BY RESPONDENT NO. 2 AND 3

**Environment Department, Govt. of Maharashtra AND
Maharashtra Coastal Zone Management Authority**

MOST RESPECTFULLY SUBMITTED:

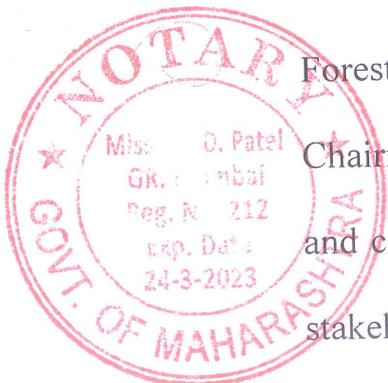
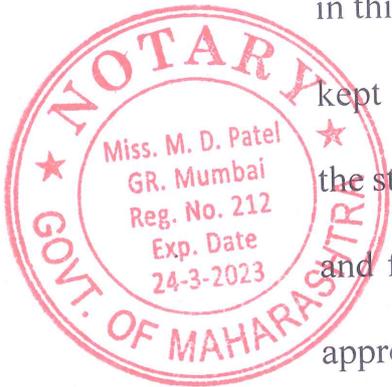
1. I, Abhay Madhukar Pimparkar, age 49, am working as Director of the Environment and Climate Change Department, Government of Maharashtra, having my office at 15th Floor, New Administrative Building Mantralaya, Mumbai and have the information from the records and authority to file this affidavit on behalf of the answering Respondent No. 2 and 3.

2. Respondent denies all the adverse allegations and averments made by the applicant. Nothing shall be construed as accepted simply because the same has not been categorically denied. Respondent craves leave to file the additional affidavit and/or rejoinder as that would be further necessary in this matter.

3. Respondent has already filed Written Submissions challenging the maintainability of this OA on the grounds of limitation. This affidavit in reply has been filed in continuation with that and by pressing the preliminary issue to be decided, before taking this OA further on merit.

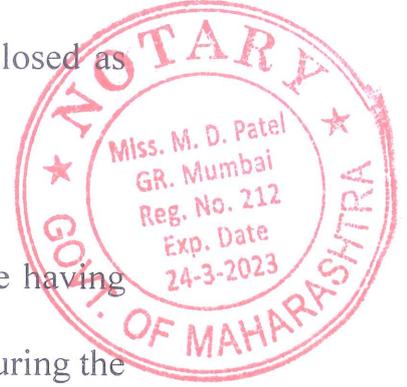
4. Respondent states that the CRZ Notification 18/01/2019 has been issued by MoEFCC who is Respondent No.1 in this matter. The Draft CRZ Notification was published and was kept open for consideration of the objections and suggestions of the stakeholders. Answering Respondent had considered its effects and found that the final CRZ Notification as finally published is appropriate, useful and protects the interests of the environment.

As such, respondents support it. The Ministry of Environment, Forest and Climate Change had constituted a Committee under the Chairmanship of Dr. Shailesh Nayak to examine various issues and concerns of coastal States and Union territories and various stakeholders, relating to the Coastal Regulation Zone Notification



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2011 and to recommend appropriate changes in the said Notification. The report submitted by Dr. Shailesh Nayak Committee has been examined in the Ministry and consultations have been held with various stakeholders in this regard; Concerns raised in the report with respect to Maharashtra are enclosed as extract of the report as Annexure-I



5. The answering Respondents No. 2 and 3 are having limited issues regarding the projects already considered during the period of issuance of the above Notification and work done on such projects. There are around 29 Government / public interest projects and 43 private projects considered under CRZ Notification, 2019

6. Respondents state and submit to this Hon'ble Tribunal that the Ministry of Environment, Forest and Climate Change, Government of India has published the CRZ Notification, 2019 in exercise of the powers conferred by sub-section (1) and clause (v) of subsection (2) of section 3 of the Environment (Protection) Act, 1986 (29 of 1986) and in supersession of the Coastal Regulation Zone Notification 2011, number S.O. 19(E), dated the 6th January, 2011. Further, Coastal Zone Management Plan of the Greater Mumbai area has been approved by the Ministry. Hence, the Respondent has considered certain projects

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of Greater Mumbai under CRZ Notification, 2019. It is further kindly submitted that pending the application, no stay OR status quo should be issued with respect to provisions of the CRZ Notification, 2019 and projects considered thereunder.



(Abhay Madhukar Pimparkar)

Director, Environment &CC and

MS, MCZMA

Place: Mumbai

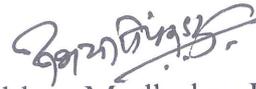
Date: 15th March, 2023



VERIFICATION

I, Abhay Madhukar Pimparkar, Age 49 years, Director, Environment and Member Secretary of the Maharashtra Coastal Zone Management Authority, having my office address at 15th Floor, New Administrative Building, Mantralaya Mumbai- 400 032 do hereby verify and declare that statements made in the aforesaid Paras are true and correct to the best of my knowledge and information and I believe the same to be true and that nothing material has been concealed therefrom.

2-15 Verified at Mumbai on this 15th day of March, 2023


(Abhay Madhukar Pimparkar)

Director, Environment &CC
and MS, MCZMA

Deponent

Identified by


Sanjay Sandanshiv

Under Secretary,

Env&CC Dept

BEFORE ME

M. D. Patel
15-3-2023
Sr. No. 134
Bk. No. 1

MISS M. D. PATEL
ADVOCATE & NOTARY
Kohiar House,
4, Dhuswadi, Dhobitalao,
MUMBAI - 400 002.



Report of the Committee to
Review the Issues Relating to
the Coastal Regulation Zone
Notifications, 2011

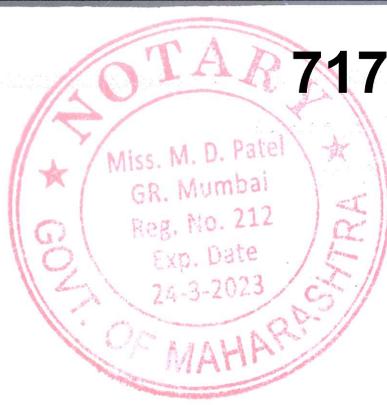
Chapter 2

Issues and Representations made by the Coastal State/UT Governments as per ToRs

- TOR-1(a) : "to examine issues relating to Maharashtra raised by the State Government vide letters dated 27.08.2013 and 23.12.2013".
- TOR-1(b) : "to examine issues relating to Karnataka raised by the State Government vide letters dated 16.08.2013, 28.02.2014 and 18.02.2014".
- TOR-1(c) : "to examine issues relating to Kerala raised by the State Government vide letters dated 10.02.2014".
- (TOR-1(d) : to examine errors/inconsistencies in CRZ Notifications, 2011 and procedural simplification)
- ToR-2 : The Committee may interact with the State Government, if necessary, and address any other issues raised by the State Government during their interaction with the Committee.



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Regional Committee to
Review the Issues Relating to
the Coastal Regulation Zone
(CRZ) Notification, 2011

A. Specific issues indicated by the State/UT Governments

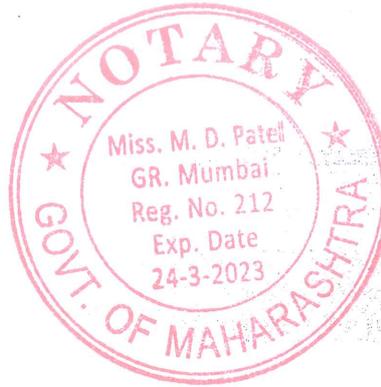
2.1 Maharashtra [ToR-1(a)]

Based on the above-mentioned ToR 1(a), the Committee visited Mumbai on 8 July 2014 and had discussions with the officials of various departments of Government of Maharashtra (GoM). The details of the issues raised and the suggestions/requests made by the various departments/agencies of GoM such as CIDCO, BMC, Slum Rehabilitation Authority (SRA) and State Tourism Department, are detailed in the following sections. The copies of the presentations along with the communications made to MoEF&CC vide the above-mentioned letters indicated in the ToR are in Volume II of this report:

2.1.1 Loss of buildable land due to demarcation of the HTL based on CRZ Notification, 2011

(a) Most of the lands in Navi Mumbai were below low tide level when it was acquired in 1971. Prior to acquisition, these coastal lands were under agriculture and saltpans. For undertaking agriculture, bunds were constructed to prevent the ingress of tidal waters. The bunds were constructed based on Dutch method. The development of Navi Mumbai was taken up in a phased manner by acquisition of land by CIDCO. The HTL being demarcated based on CRZ Notification, 2011, indicates that the total land loss could be around 1240 hectares of developable area. Further, additional land is to be provided to project affected people and R&R-related activities including providing 260 hectare of land for the development of Navi Mumbai Airport.

(b) The reasons for ingress of creek water into the land area were examined by the Committee in detail along with graphic presentations made by CIDCO. Over a period of time due to non-maintenance of the bunds and breaking of the bunds by locals for shallow water fishing, the seawater has ingressed into the land. Due to the salinity ingress, the HTL has further shifted landwards. In several of such areas



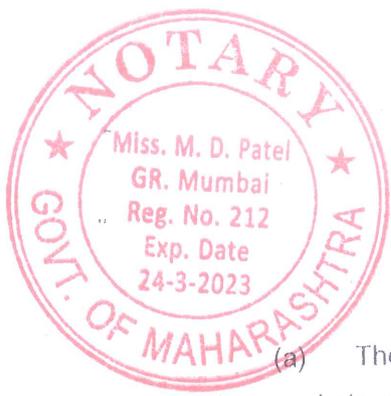
Notary Seal of Miss. M. D. Patel, GR. Mumbai, Reg. No. 212, Exp. Date 24-3-2023, GOVT. OF MAHARASHTRA.

where salinity ingression has taken place, mangroves have grown. On account of the shifting of the HTL on the landward side, it was indicated that approximately 744 hectares of net saleable land which is 60% of the total 1240 hectares that CIDCO would lose is estimated around Rs.37,200 crore (with an average price of Rs. 50,000/m²). Further, the land being allotted to the affected people due to the project, under the 'land for land' scheme would be coming under CRZ-I and CRZ-II. The people who have been affected by airport construction need to be located close to the creek as they are fishermen communities. On account of all these activities, CIDCO would lose further developable land area. In this regard, it was requested that the HTL as of 1991 should be retained.

(c) The Hon'ble High Court (HC) of Bombay in its Order dated 6 October 2005 has directed to observe total freeze on destruction of mangroves and to maintain an NDZ of 50 m width around any mangrove. Further, as per the above-mentioned Orders, no steps can be taken that would stop the ingress of saline water into areas with mangroves. Hence, CIDCO has stopped repairing the bunds and desilting of the ponds. The GoM has requested that the HTL demarcation as per CRZ Notification, 1991 should be allowed to continue.

(d) For the purpose of maintenance and desilting of Dronagiri holding ponds, CIDCO has again approached Hon'ble HC of Bombay. The Hon'ble HC directed MCZMA and MoEF&CC to decide whether holding ponds and channels fall in CRZ. It was indicated that MCZMA has submitted a report to MoEF&CC and MoEF&CC vide their letter dated 31 October 2013 have requested CIDCO to provide for five times compensatory mangrove afforestation in lieu of the mangroves along the holding ponds. The contention of the CIDCO is that none of the holding ponds and channels in Navi Mumbai falls in CRZ-I as they are not part of the creek. Some of the mangroves fall partly in CRZ-II as they are along the artificially created water bodies excavated out of the firm land. It was indicated that because the ponds were not desilted the water holding capacity in the ponds have decreased, thereby causing floods in the vicinity during monsoons.

2.1.2 Issues relating to slum redevelopment by SRA and redevelopment of dilapidated, cessed and unsafe building



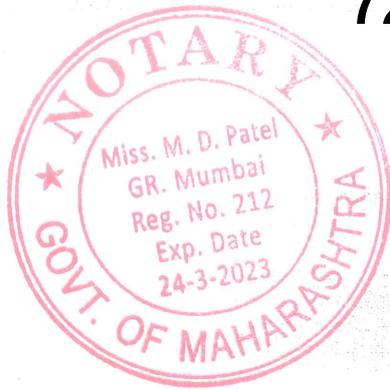
Report of the Committee to
Review the Issues Relating to
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Notification, 2011

- (a) The SRA Scheme is being implemented by GoM. It was indicated that large pockets of slums have settled along the seashore. About 291 slum pockets are present in CRZ-II, which houses 3.5 lakh huts with 15 lakh people living in such slums. It was indicated that in the CRZ-II areas the eligible Floor Space Index (FSI) within city is 1.67 while in suburbs it is 1.25 as against 3 or 4 FSI in the non-CRZ areas. The provisions of CRZ Notification, 2011 pertaining to slum rehabilitation scheme were explained in detail and the hardships faced by the slum dwellers and the environmental and social issues of slums explained.
- (b) It was informed that as per the Notification, 2011, GoM had sought proposals on joint venture basis through wide publication in newspapers. It was also informed that not a single valid proposal was received even after repeated advertisements. On account of the provision in the CRZ Notification, 2011, the slum redevelopment in CRZ-II areas are languishing as the scheme indicated under the CRZ Notification, 2011 is not economically viable.
- (c) The schemes with regard to the slum redevelopment in CRZ-II areas should be allowed to develop with current permissible FSI as prevailing outside CRZ. Further, no joint venture with Government organization should be made mandatory. The ratio of 51:49, Government:private party, as indicated in the CRZ Notification, 2011 be waived off and permitted to be developed by the proponent.

2.1.3 Municipal Corporation of Greater Mumbai on CRZ issues relating to redevelopment of dilapidated, cessed and unsafe building

- (a) It was highlighted that the datum line of redevelopment of dilapidated, cessed and unsafe buildings is frozen as on 6 January 2011 by MoEF&CC vide corrigendum dated 29 March 2011 to the CRZ Notification, 2011. In this regard, it was indicated that declaration of dilapidated buildings is a continuous process based on ageing of structures. GoM declares buildings based on criteria as dilapidated. It was highlighted that the buildings which are now declared safe could become dilapidated in future. Hence, the Notification should provide for such dynamic situations. For undertaking redevelopment of dilapidated structures, the FSI/Floor Area Ratio (FAR) should not be frozen but enabling provision should be inserted in the notification for

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Review the Issues Relating to
the Coastal Regulation Zone
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providing FSI and FAR on that particular date on which the redevelopment is accorded permission. It was suggested that it would be desirable to specifically incorporate permissibility of reconstruction/redevelopment in accordance with Town and Country Planning Regulations applicable as on the date on which such reconstruction is approved by competent authority.

(b) It was requested that the corrigendum may be modified as "*The Floor Space Index or Floor Area Ratio for such redevelopment schemes shall be in accordance with the Town and Country Planning Regulations prevailing as on the date on which the project is granted approval by the competent authority.*"

2.1.4 Issues relating to Koliwadadas and Goathans of Maharashtra

(a) It was also highlighted that in the CRZ Notification, 2011, Koliwadadas and Goathans are classified as CRZ-III. It was indicated that presently there are 23 Goathans and 16 Koliwadadas in Mumbai affected by CRZ. Declaring these Koliwadadas and Goathans as CRZ-III would severely limit the development thereby defeating the objective of ensuring livelihood security to the fisher and other local communities in a sustainable manner. Further, it was indicated that there is no clarity in respect of availability of Town and Country Planning Regulations for redevelopment/reconsideration of dwelling units in Koliwadadas/Goathans. In this regard, BMC requested that instead of CRZ-III these Koliwadadas and Goathans be classified as CRZ-II and current DCR to be made applicable to facilitate development. Accordingly, Clause (g) of Sr. No.(8)(V)(iii) for the CRZ Notification, 2011 be modified.

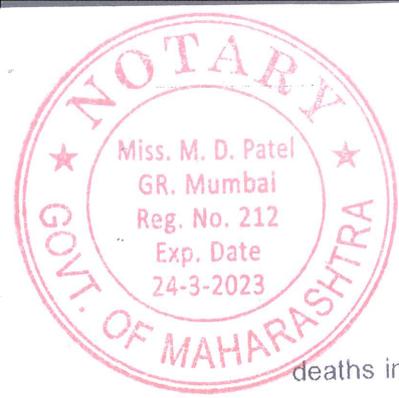
2.1.5 Issues relating to the development of coastal road project by MCGM

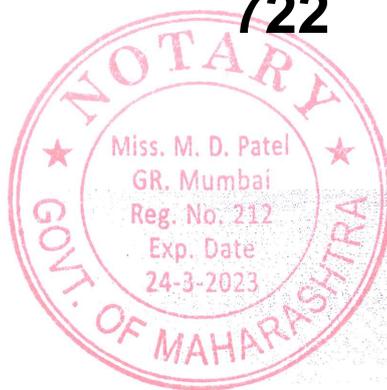
(a) It was indicated in the presentation that in the present scenario where the majority of the public use north-south local train, there has been several incidents of accidents. It was indicated that due to increase in population and large number of commuters taking the local train the accident rate has increased to around 2000

deaths in a year. In this regard, the GoM proposes to construct 36 km long coastal road from Colaba up to Malad-Kandivali Link Road. The proposed road would be 4+4 access controlled freeway. For the proposed road, there shall be no land acquisition and no R&R. The proposed road would protect the beaches and fishermen's villages without obstructing the natural course of seawater. It was also clarified that for the construction of the road project, no significant damage would be caused to the mangroves or beaches. The road will be on stilts and in places through the tunnels. For the road project, approximately 9.8 km reclamation is proposed in the sea with a total area of 160 hectares and about 8 km reclamation in the mangrove areas. It was also indicated that in the mangrove stretch of 3.45 km of the road would be constructed on stilts and wherever mangrove destruction would take place re-plantation of mangroves will be taken up with the Forests Department. It was indicated that by construction of the road there would be significant reduction of traffic congestion on the existing roads and reduction in travel time.

(b) To develop the above-mentioned road project, MCGM requested for amendment of para 3(iv) of the required in CRZ Notification, 2011 providing for "land reclamation for construction of coastal roads". In the reclaimed area, MCGM proposes to develop promenades, gardens and green spaces. It was indicated that no real estate development for commercial use shall be permitted and no relaxation of CRZ regulation on the landward side of the proposed road shall be sought.

2.1.6 With regard to new airport CIDCO vide their letter No. CIDCO/MD/2013/247, dated 23 December 2013 have sought for an in-principle approval for a proposal for development of islands airport in Thane creek, Navi Mumbai. As per the letter, the Navi Mumbai International Airport (NMIA) has obtained all necessary clearances including permission from the Hon'ble HC for removal of mangroves. The project involves 671 ha of private land and rehabilitation of 3500 families. The 3500 people affected by this project need to be rehabilitated. This is a serious issue that CIDCO is facing including escalating cost of airport development. In this regard, CIDCO intends to search for an alternative site for airport. CIDCO has proposed a development of an airport in an island in Thane creek which is west of existing NMIA site. As per the letter this islands airport in Thane creek would not require acquisition of private land and rehabilitation of any population. In the letter, CIDCO has





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requested MoEF&CC, "I request MoEF&CC to look into the proposal of development of airport on a reclaimed island in Thane creek, Navi Mumbai and grant us "In-principle approval" for the same. Upon approval, CIDCO would initiate further necessary studies such as preparation of Detailed Project Report (DPR) and EIA report for obtaining Environment and CRZ clearance for the island airport proposal".

2.2 Karnataka [ToR-1(b)]

The Committee visited Bengaluru on 21 August 2014 and had discussion with the officials of Government of Karnataka (GoKA) which was represented by Chief Secretary, GoKA. The issues raised by GoKA are detailed later and the copy of the presentations and letters are provided in Volume III of this Report.

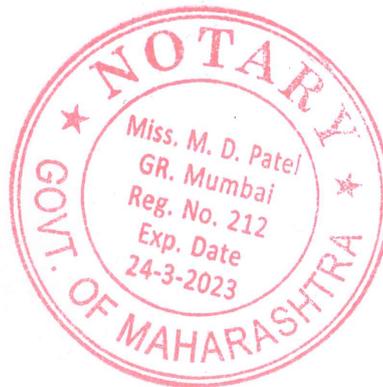
2.2.1 Fishermen issues in Karnataka

(a) Most of the fishermen villages are located on the sea coast, on account of the stipulations of 200 m NDZ the fisher folk are unable to undertake developmental activities especially the dwelling units and other infrastructure required for the protection of their life and livelihood. Therefore, the width of NDZ is to be reduced to 50 m as provided for the islands of Kerala instead of 200 m all along the sea coast and width of the river/creek with maximum of 50 m along the river/creek. Fisher folk need to build their dwelling units close to sea only for the convenience of earning their livelihood. Therefore, dwelling units should be permitted in the NDZ to enable accommodation for expansion of families of fisher folk and local inhabitants. Due to the restrictions the fisher folk and the local inhabitants are unable to avail the benefit of "MatsyaAshraya" and other housing schemes of Government. In view of the above, the state Government has requested amendment to the CRZ to provide for construction of new dwelling units be permitted within 100 meters from HTL.

2.2.2 Issues relating to tourism sector

(a) A proposal has been forwarded to the MoEF&CC through the Ministry of Tourism (MoT), GoI by Department of Tourism (DoT), GoKA with reference to the report on CRZ submitted earlier by the Expert Committee headed by Prof. M. S. Swaminathan. The proposal sought amendments to the CRZ Notification, 2011 in line with the special provisions provided for the states of Kerala, Maharashtra and Goa and addressing various issues faced by local agencies in tourism development. Under the 12th Five-year plan MoT, GoI planned development of Tourist Circuits across India. DoT, GoKA for the year 2013–2014 had proposed development of Mega Coastal Tourism Circuit as a measure to boost coastal tourism in the State. The development comprises basic tourist amenities to be provided to the tourists in 23 beaches along the coast of Karnataka. To promote and enhance the tourism experience of tourists, DoT GoKA had submitted a proposal to the MoEF&CC seeking relaxation of CRZ norms by way of "Special Tourism Zones".

(b) The State has identified 41 beaches and 11 islands with good tourism potential. In Karnataka the coastal stretches very narrow because of the Western Ghats. In certain stretches the coastal areas are less than 100mts. On the average the coastal stretch is around 300mts. The national highway, and in some cases state highway, pass through this narrow stretch of CRZ, even within NDZ. The State Government of Karnataka requested for special relaxation to permit certain constructions of temporary nature on the seaward side of such road when the roads fall in NDZ for temporary tourism related activities. On the landward side of the road the tourism development as indicated in the CRZ Notification could be taken up subject to environmental conditions.



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